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10/825,998

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Justin W. Matheson

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FELLERS SNIDER BLANKENSHIP

BAILEY & TIPPENS

THE KENNEDY BUILDING

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TULSA, OK 74103-3318

EXAMINER

GUIDOTTI, LAURA COLE

ART UNIT

PAPER NUMBER

3723

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|--|--|
| Office Action Summary | Application No. 10/825,998 | Applicant(s) MATHESON, JUSTIN W. | |
| | Examiner Laura C. Guidotti | Art Unit 3723 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 14 January 2008 has been entered.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the binding wedge slit and binding wedge must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering

of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

After much consideration, the Examiner has found that the newly introduced claim limitation "binding wedge" was not described in the specification or drawings at the time of the invention and is considered to be new matter. "Wedge" is defined as "A piece of material, such as metal or wood, thick at one edge and tapered to a thin edge at the other for insertion in a narrow crevice, used for splitting, tightening, securing, or levering" according to *The American Heritage® Dictionary of the English Language, Fourth Edition Copyright © 2006 by Houghton Mifflin Company*. The disclosure does not refer to any structure "thick at one edge and tapered to a thin edge." The actual

term "wedge" can be found twice within the Applicant's specification, however neither instance would lead one of ordinary skill in the art that a binding wedge was disclosed at the time of the invention. The first occurrence of "wedge" can be found on Page 5 Lines 5-7 in describing a structural element *in addition* to any slit for securing a loose end of the string. Therefore, a binding wedge or binding wedge slit would be different than that "wedge" (it is noted that wedge is listed as one from a possible group of structural elements including a hook, latch, peg, ratchet, clamp, etc.). The second occurrence of "wedge" is actually "wedged", and can be found on Page 11 Lines 3-5 where the Applicant describes the cord 130 to be "wedged in place" within rubber fittings 510. "Wedged" itself is defined as "To crowd or squeeze into a limited space" according to *The American Heritage® Dictionary of the English Language, Fourth Edition Copyright © 2006 by Houghton Mifflin Company*. In this second occurrence, these rubber fitted slits nearly act as wedges by the better securing ability created by the rubber and not the geometry of a wedge shape. For these reasons, a binding wedge or binding wedge slit is considered to be new matter. Lastly, the Examiner notes that claim 1 as amended now requires that the handle has a slot, a binding wedge slit, and a separate binding wedge, and this combination of elements are considered to be new matter.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "said at least one binding wedge" in Line 9. There is insufficient antecedent basis for this limitation in the claim. In Line 8 there is a binding wedge *slit*, not a binding wedge. It is unclear as to whether the binding wedge and binding wedge slit are the same. It also appears that the word "one" was left out after "at least" in Line 8.

Claim 6 recites the limitation "said binding wedges" in Line 2. There is insufficient antecedent basis for this limitation in the claim. Claim 1 only requires at least one *singular* binding wedge.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 3-8, 12, 16, and 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen, US 6,453,503 in view of Gallacher, US 6,276,022.

Chen discloses the claimed invention including an elongate handle (14), the handle having an upper and a lower end (upper end is leftmost end as shown in Figure 2 and lower end is rightmost end as shown in Figure 2), a forward side and a rearward side (the forward side is uppermost side in Figure 2, and bottom side is the rearward side), and a periphery (Figure 2), wherein at least the lower end is adapted for grasping (Column 2 Lines 18-19), the upper end of the handle having a slot (46 or those marked

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47 in Figure 5), the slot having a slot opening in the periphery of the handle upper end (opening shown in Figures 2 and 4) and the slot being oriented substantially parallel to a center longitudinal axis of the handle (clearly shown in Figure 4 that 46 is parallel to and along the longitudinal axis of the handle or alternatively in Figure 5 either of slots 47 are also parallel to the longitudinal axis of the handle, the longitudinal axis extending vertically through 14 as oriented in Figure 4), wherein the handle has at least one binding slit therein (such as 47 in Figures 2 or 4 or alternatively those marked 46 in Figure 5), the at least one binding slit being proximate to the slot (Figure 2 and 4), being oriented at an angle greater than about 90 degrees with respect to the slot (as shown in Figures 4 or 5) and having a slit opening in the periphery of the handle upper end (see Figures 2 and 4-5), and a porous scrubbing material (12) having an attaching cord affixed thereto (16), whereby the cord is adapted to pass through the slot and engage the binding slit (see Figures 3, 5, 6) (claims 1, 16). Regarding claims 3 and 18, the cord is capable of being removably attached to the scrubbing material (see Figures). Regarding claims 4 and 18, the scrubbing material is a mesh netting (see Figures; Column 2 Lines 3-6). Regarding claims 5 and 19, the upper end of the handle is outwardly flared at its terminus (see Figure 2). Regarding claim 7, at least one binding slit is oriented to be substantially parallel to the slot (as shown in the embodiment of Figure 5). Regarding claim 8, there is a plurality of binding slits (see Figure 2). Regarding claim 12, wherein at least one of the binding slits is formed in the upper end of the handle at a shoulder of the outwardly flaring terminus of the handle (as shown in

Figures 2 and 4). Chen discloses a binding slit (or binding slits), however does not disclose a binding wedge (binding wedge slit).

Gallacher teaches a similar scrubbing device comprising an elongate handle having upper and lower ends, forward and rearward side, and a periphery (17, see Figures), and in order to retain a porous scrubbing material (11) to the periphery there is a binding wedge or binding wedge slit (the wedge is formed at the pressure points between 143 and 29, see Figure 4 and Column 2 Line 67 to Column 3 Line 5) whereby the attaching cord (15) is adapted to pass through and engage the binding wedge thereby removably fastening the scrubbing material to the handle (see Figures 3a-4, Column 2 Line 49 to Column 3 Line 7). This cord attachment allows a user to hold the handle and wipe the scrubbing material without the scrubbing material slipping (Column 1 Lines 46-51). Regarding claim 6, at least one of the binding wedges has a left interior face having a left central ridge extending outwardly (left ridge being the first pressure point of 143, Column 2 Lines 64-67) and a right interior face having a right central ridge extending outwardly therefrom (right ridge being the second pressure point of 29, Column 2 Line 67 to Column 3 Line 1), the left and right ridges being in alignment with and opposing each other providing a raised surface along which the cord may be moved when it is engaged (as shown in Figure 4, Column 3 Lines 1-5).

It would have been obvious for one of ordinary skill in the art at the time of the invention to substitute the binding slit or binding slits of Chen for binding wedges or binding wedge slits, as Gallacher teaches, so that the cord can be easily attached and

detached from the handle by a user while also providing a secure attachment means so that the scrubbing material does not slip from the handle during use.

6. Claims 2 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen, US 6,453,503 and Gallacher, US 6,276,022 as applied to claims 1 and 16 respectively, in view of Chang, US 6,370,723.

Chen and Gallacher disclose all elements claimed above, however do not disclose a material from which the attaching cord comprises.

Chang discloses a handle having porous scrubbing material fastened to it by an attaching cord (66) that comprises string (Column 2 Line 43).

It would have been obvious for one of ordinary skill in the art at the time of the invention to modify the attaching cord of Chen and Gallacher so that it comprises string, as Chang teaches, in order to attach a handle to a porous scrubbing material that is to be used as a bathing tool.

7. Claims 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen, US 6,453,503 and Gallacher, US 6,276,022 as applied to claim 1, in view of Stenner, US 5,182,838.

Chen and Gallacher disclose the claimed invention including all elements mentioned above, however does not include that the binding wedge is lined with a non-skid material such as rubber.

Stenner teaches a device that has a binding slit (50) that engages an attaching cord, such as a shoelace (30a, 30b) in order to non-permanently grip a cord in place (Abstract). The binding slit is lined with a non-skid material such as rubber (Figure 7;

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Column 6 Lines 14-24) in order to increase the surface friction and durability of the slit sidewalls (Column 6 Lines 14-20).

It would have been obvious for one of ordinary skill in the art at the time of the invention to modify the binding wedges of Chen and Gallacher to be lined with a non-skid material such as rubber, as Stenner teaches, so that the cord can be releasably locked or held into place with increased surface friction in the binding wedge.

8. Claims 13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen, US 6,453,503 and Gallacher, US 6,276,022 as applied to claim 1, in view of Chang, US 6,370,723.

Chen and Gallacher disclose the claimed invention including all elements mentioned above, however do not include a rearward side of the handle having at least one massage boss thereon.

Chang teaches a scrubbing device that a handle (12) that has a rearward side having at least one massage boss thereon (45; see Figures 1-4 particularly) so that a user can both clean with a porous scrubbing material (14) and massage the body using the same cleaning tool (Column 2 Lines 61-63, Column 3 Lines 30-35).

It would have been obvious for one of ordinary skill in the art at the time of the invention to modify the rearward side of the handle of the scrubbing device of Chen and Gallacher by including at least one massage boss, as Chang teaches, so that a user may use the same bathing and scrubbing equipment to also massage the body of the user.

9. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chen, US 6,453,503 and Gallacher, US 6,276,022 as applied to claim 1, in view of Borchers et al., US 6,510,577.

Chen and Gallacher disclose the claimed invention including all elements mentioned above, however does not include at least a portion of the handle being covered with an exfoliation mat.

Borchers et al. teach a scrubbing device having both a handle (52) and porous scrubbing material (12) wherein a portion of the handle is covered with an exfoliation mat (46; see Figures 12-13). The device of Borchers et al. uses a device having both porous scrubbing material and an exfoliation mat so that a user can better exfoliate and remove dead cells from the skin while also maintaining a lather of soap (Column 1 Lines 17-31, Column 2 Lines 10-19).

It would have been obvious for one of ordinary skill in the art at the time of the invention to modify the handle of Chen and Gallacher to further include at least a portion of the handle being covered with an exfoliation mat, as Borchers et al. teach, so that a user may simultaneously use an exfoliation mat to remove dead skin cells while retaining a lather of soap with the porous scrubbing material to effectively clean the skin.

10. Claims 9 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen, US 6,453,503 and Gallacher, US 6,276,022 as applied to claims 1 and 16 respectively, in view of Sabo, US D156,039.

Chen and Gallacher disclose the claimed invention including all elements mentioned above. Chen includes a configuration in Figure 5 that has two slots parallel to each other just before the upper end of the handle is outwardly flared, however does not include that each of the two binding slits have a different width.

Sabo teaches a holder for a porous scrubbing device wherein the retaining slits (unlabeled, shown in Figure 1) each have a different width (Figure 1). These slits are also located just before the upper end of the handle is outwardly flared.

It would have been obvious for one of ordinary skill in the art at the time of the invention to modify the widths of the binding wedges of Chen and Gallacher to each have a different width, as Sabo teaches, so that a user would be capable of employing a cord of any desired or convenient width.

Response to Arguments

11. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

Regarding the comments presented by the Applicant in response to the Advisory Action, the Examiner has thoroughly reviewed the term "binding wedge" and has found this to be new matter. The Examiner hopes that the explanations as to why this is considered to be new matter were clearly stated under the 35 U.S.C. 112 first paragraph rejection made above. The Examiner does not find the plain meaning of "wedge" to be within the context of the originally filed disclosure. There has been no special meaning of "binding wedge" or definition of "retaining slit" made in the originally

filed disclosure. The Examiner's main contention is that a "wedge" by definition is thick at one edge and tapered to a thin edge at the other, and the original disclosure does not present such a structure. Thus, the Examiner maintains that a "binding wedge" is considered to be new matter.

Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Guidotti whose telephone number is (571) 272-1272. The examiner can normally be reached on Monday-Thursday, 7:30am - 5pm, alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Hail can be reached on (571) 272-4485. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Laura C Guidotti/

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Primary Examiner, Art Unit 3723

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